lant had been discriminated against contrary to Article 12(1) of the Constitution of Singapore which states that "All persons are equal before the law and entitled to the equal protection of the law." We rejected this contention. The Attorney-General of Singapore is by Article 35(8) of the Constitution given power, exercisable at his discretion to institute, conduct or discontinue any proceedings for any offence. As was said by Lord Diplock when delivering the judgment of the Privy Council in *Teh Cheng Poh* v. *Public Prosecutor*[1] at page 56 of the discretion exercisable by the Attorney-General of Malaysia under Article 145(3) of the Malaysian Constitution which is *in pari materia* with our Article 35(8):

"There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each of them may vary enormously between one case and another. All that equality before the law requires, is that the cases of all potential defendants to criminal charges shall be given unbiassed consideration by the prosecuting authority and that decisions whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration."

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Lee Chan & Partners.*

GOLD COIN LIMITED v. TAY KIM WEE

[C.A. (Lai Kew Chai, Chua & Thean JJ.)
March 4, 1986]

[Singapore – Civil Appeal No. 62 of 1984]

Contract – Quantum meruit – Nature of quantum meruit claims.

Contract – Term in letter of appointment – Whether term has been varied impliedly.

Employment – Contract – Term in letter of appointment – Payment of commission – Whether term has been varied.

The respondent Tay Kim Wee took up employment with the employers, the appellants, with effect from August 1, 1959. The conditions of service were all spelt out in a letter of July 29, 1959, from the employers to the respondent. One of the terms providing for the payment of commission was as follows:

> *"Commission:* After the development of sales of Equipment and Chicks, a certain amount of Commission will be given from the profits."

When the respondent entered the service of the appellants on the terms set out in the letter, the poultry project contemplated under the paragraph headed by the word "Commission" was then under study. The sale of animal feed was one of the principal activities of the appellants. He headed and throughout his employment remained responsible for the sale of animal feed.

By 1965, the poultry project in the form of hatchery for chicks and the sale of day-old chicks came into fruition. It involved the import of parent breeders from the United States of America, raising them in Singapore, producing hatching eggs, hatching them and selling the day-old chicks to poultry farmers in the rural areas of Singapore and Malaysia. The respondent was appointed concurrently as the Manager of the Hatchery Division. The Hatchery Division of the appellants performed well and on the evidence it was undisputed that the respondent's contribution to its success was singular and significant. He was exceptionally devoted to his work.

Although the Hatchery Division returned handsome profits, the respondent did not before his resignation from the appellants claim his commission; nor did he provide for such claims when he was preparing some of the budgets for the appellants. Not unexpectedly the financial accounts of the appellants relating to the years in question were prepared on the basis that no such commission was payable.

The respondent on April 25, 1981, tendered to his employers his letter of resignation, ending his employment on July 31, 1981. By a letter of June 4, 1981, the respondent for the first time claimed commission in accordance with the terms of his letter of appointment. The appellants declined to entertain the claim.

The respondent claimed a total sum of $162,369.10 from the appellants on the basis of the number of chicks sold for the period from 1975 to 1981 *ex* hatchery or direct at 2 cents per chick commission. Not receiving payment, the respondent commenced proceedings in the High Court on August 12, 1981. In the High Court, he obtained judgment in the sum of $80,000 on a *quantum meruit* as recompense for services rendered over a period of six years ending with the date of the filing of the writ of summons herein on August 12, 1981, and interest thereon which the learned judge in his discretion fixed at a lump sum of $20,000 in respect of the same period of six years. The appellants appealed against the said judgment.

Held: (1) the claim to a *quantum meruit* in the present case was contractual in nature. The implied promise to pay a reasonable commission, as found by the learned judge, is and should properly be treated in the same way as other implied terms in the law of contract. The court was satisfied that the learned judge had properly applied the principles adumbrated in *Way* v. *Latilla*[1];

(2) the learned trial judge was right in law in holding that on a proper construction of the paragraph there was no concluded contract obliging the appellants to pay a commission since the essential term as to the amount of the commission was left blank. However, considering all the circumstances, the learned judge was right to imply a contract to pay a *quantum meruit* which would be fixed after taking into account what would be a reasonable commission in all the circumstances;

(3) a fair reading of the entire letter of appointment supported the conclusion that it was the intention of the parties that the respondent was to receive in addition to salaries and other benefits an incentive based on the profits of the Hatchery Division earned from year to year. The express provision for the payment of a commission which fails as a binding agreement because of the absence of the essential term as to the amount or rate of the commission was nevertheless a substantial factor in support of the implication of a contract to pay a *quantum meruit;*

(4) the selfless inactivity of one party and the ignorance of the other party are very poor foundation to support any implied consensual variation of the contractual term to pay a *quantum meruit;*

(5) the learned trial judge's assessment of $80,000 was reasonable and the imposition of interest at $20,000 was also fair in all the circumstances of the present case.

Case referred to:

(1) *Way* v. *Latilla* [1937] 3 All E.R. 759.

COURT OF APPEAL.

Davinder Singh for the appellants.
Henry Hangchi for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court): In the High Court, the respondent, whom we will refer to as "Mr. Tay," obtain judgment against the appellants, which we will refer to as "the Employers," in the sum of $80,000 on a *quantum meruit* as recompense for services rendered over a period of six years ending with the date of the filing of the Writ of Summons herein on August 12, 1981 and interest thereon which the learned Judge in his discretion fixed at the lump sum of $20,000 in respect of the same period of six years. The assessment of $80,000 had taken into account two sums of $3,000 each which Mr. Tay had received in 1979 and 1980 to which we will later make reference. Against that judgment, this appeal was brought.

The facts giving rise to this appeal were these. Before entering the service of the Employers Mr. Tay had been in Government service for 6 years. He was involved in the rural development programme, an area of work which must have held him in good stead when he took up employment with the Employers with effect from August 1, 1959. The conditions of service were all spelt out in a letter of July 29, 1959, from the Employers to Mr. Tay. As much turns on the proper construction in all the circumstances of the paragraph in the letter under the heading "Commission," we have to set out the material parts of the letter so that the context may be appreciated. The material parts of the letter are as follows:

"We are pleased to confirm your appointment as head of Sales Promotion of our Animal Feed Department, at the following terms:

Date of Employment: August 1, 1959

Salary: $550.– plus $130.– Travelling allowance per month. Our contribution to the Central Provident Fund will be 5% of your salary.

Commission: After the development of sales of Equipment and Chicks, a certain amount of Commission will be given from the profits.

. . . . .

Duration of the Contract is for one year and will be automatically extended every year unless notice is given three months in advance by either party.

. . . . ."

When Mr. Tay entered the service of the Employers on the terms set out in the letter, the poultry project contemplated under the paragraph headed by the word "Commission" was then under study. The sale of animal feed was one of the principal activities of the Employers. He headed and throughout his employment remained responsible for the sale of animal feed. His work as such head, of course, was not the subject matter of his claims herein. By 1965 the poultry project in the form of a hatchery for chicks and the sale of day-old chicks came into fruition. It involved the import of parent breeders from the United States of America, raising them in Singapore, producing hatching eggs, hatching them and selling the day-old chicks to poultry farmers in the rural areas of Singapore and Malaysia. Mr. Tay was appointed concurrently as the Manager of the Hatchery Division. The Hatchery Division of the Employers performed well and on the evidence it was undisputed that Mr. Tay's contribution to its success was singular and significant. He was exceptionally devoted to his work. Throughout his employment he worked ten hours a day and nearly every Sunday and Public Holiday. As an example, he successfully marketed day-old chicks to South Vietnam in 1968 during the war.

It was achieved at some risk to his life when he accompanied the first shipment to South Vietnam and for which the Employers paid him a reward of $2,000.

Although the Hatchery Division returned handsome profits, Mr. Tay did not before his resignation from the Employers claim his commission; nor indeed did he provide for such claims when he was preparing some of the budgets for the Employers. Not unexpectedly, the financial accounts of the Employers relating to the years in question were prepared on the basis that no such commission was payable.

Over the years Mr. Tay's salaries, like those of the other employees, were increased. Like the other employees, he also received yearly bonuses. But unlike the other employees, he was given two additional payments. Thus with effect from April 1, 1979 his salary was raised to $4,400 per month. He was also informed by a letter of April 9, 1979 from the Employers that "[i]n recognition of the Division's (*i.e.* Hatchery's) profits, you will furthermore receive $3,000 which is in addition to the 1½ months bonus. This amount ... is to be clearly understood as a one time payment." Again in the following financial year Mr. Tay's salary was increased to $4,850 per month and he again received another sum of $3,000 under almost similar circumstances.

For reason or reasons not apparent on the record of evidence Mr. Tay on April 25, 1981 tendered to the Employers his letter of resignation, ending his employment on July 31, 1981. By a letter of June 4, 1981 Mr. Tay for the first time claimed commission in accordance with the terms of his letter of appointment. The Employers declined to entertain the claim and stated that their Board of Directors had been advised that by reason of the way the commission provision was worded, it was void for uncertainty, and that, in any event, Mr. Tay's silence on this matter for more than 20 years (in fact, it was about 15 years) implied that he had waived the provision. However, the Employers offered Mr. Tay a gratuity of $30,000 in full and final settlement of his claims which Mr. Tay did not accept. Instead Mr. Tay claimed a total sum of $162,369.10 from the Employers on the basis of the number of chicks sold for the period from 1975 to 1981 ex hatchery or direct at 2 cents per chick commission. Not receiving payment Mr. Tay commenced proceedings in the High Court on August 12, 1981 claiming the commission which he properly limited to cover the period of six years up to the date of the writ.

In the course of the trial below Mr. Tay explained that he had not from the beginning made a claim for the commission because he simply did not think about it. For the Employers the evidence of the Managing Director was that he was totally unaware of the terms of the letter of appointment, which was not in the office file when he took over in 1969. He said: "If I had known about (it) I would have done something about it." Towards the end of the trial, after most of the evidence was given, Mr. Tay was allowed to amend his claim of commission from that based on the number of chicks sold to one based on the profits of the Employers' Hatchery Division earned during the relevant period of six years. According to defence exhibit "D1", which was introduced after the amendment, the total profits of the six years after tax was $1,419,570 with the yearly figures varying between some $87,000 and $135,000.

We now turn to the grounds of appeal. Although the grounds of appeal as set out in the Petition of Appeal totalled six in number, many of them did overlap or were two sides of the same coin. Before us, three principal grounds were canvassed. The appeal was based first on the submission that on the proper construction of the written terms of employment it was an error in law for the learned trial Judge to hold that Mr. Tay was entitled to a reasonable sum based on the implied contract of the Employers to pay him a *quantum meruit*. Secondly, it was argued that on the evidence the term of the written contract as to the payment of a commission was excluded by a subsequent variation of the contract. Lastly, it was further contended that the assessment of the sum of $80,000 and the imposition of interest at $20,000 were unsupported by the evidence or were excessive.

In amplifying the first ground of appeal, counsel for the Employers invited us to look at the paragraph in the letter of appointment relating to the payment of commission, which we have set out earlier, and contended that the paragraph had no contractual effect at all. He prayed in aid the following remarks of the learned trial Judge: "... if the plaintiff had proceeded on the terms of the letter of appointment ... with the material clause that commission was to be a percentage of the profits, but with the figure left blank, the Court could not supply the figure." Counsel contended that having expressed that view about the proper

construction of the paragraph it was not open to the learned trial Judge to conclude that Mr. Tay was "entitled to a reasonable payment on the implied contract to pay him *quantum meruit.*" We have reviewed the evidence, particularly the meaning of the crucial paragraph, the company it keeps, and what the learned trial Judge said in the rest of his judgment. We have come to the conclusion that the learned trial Judge was right in law in holding that on a proper construction of the paragraph there was no concluded contract obliging the Employers to pay a commission since the essential term as to the amount of the commission was left blank. But considering all the circumstances, we are also of the view that the learned trial Judge was right to imply a contract to pay a *quantum meruit* which would be fixed after taking into account what would be a reasonable commission in all the circumstances.

In considering this ground of appeal, it seems to us important to point the exact nature of the claim to a *quantum meruit* by Mr. Tay. It is contractual in nature, in contrast to another type of *quantum meruit* claims which is *quasi*-contractual: for the distinctions, see Vol 9 *Halsbury's* Laws of England, 4th edn., para 692. The implied promise to pay a reasonable commission, as found by the learned trial Judge, is and should properly be treated in the same way as other implied terms in the law of contract. We are satisfied that the learned trial Judge had, contrary to the submissions advanced on behalf of the Employers, properly applied the principles adumbrated in *Way* v. *Latilla.*[1]

An analysis of the case will make this demonstrably clear. The House of Lords in that case dealt with the questions, amongst others, whether there was a concluded contract under which Mr. Way, an employee, was entitled to a share or interest in certain gold mining concessions in West Africa which Mr. Latilla had acquired through the efforts of Mr. Way and, if not, whether there was an implied contract to pay him a *quantum meruit.* In the course of their preliminary discussions in 1927 in England, in which Mr. Latilla said that he was attracted by the prospects of acquiring the concessions, Mr. Way came away from the discussions knowing that no arrangement was made except that he was to share with Mr. Latilla if there was anything to be made. Mr. Way had said in evidence: "I think the expression that he used was that we could both make a bit if I was successful in obtaining any vacant ground of a suitable nature." Mr. Way returned to work in a mine in West Africa, which was owned by a company in which Mr. Latilla was not interested. He wrote at the end of 1927 about a property called Anfargah but Mr. Latilla did not give him any instructions until some nine months later when Mr. Latilla cabled Mr. Way. We think it is useful to set out what subsequently transpired between them so that a comparison may be made with the bargain in the instant case. The cable referred to Anfargah and ended with these words: "use best endeavour peg for my account. I will protect your interest." In one of the subsequent telegrams, Mr Latilla stated: " I want obtain concession such ground on strike as you think valuable please act quickly and cautiously." Another cable from Mr. Latilla stated: "Please claim Bogosu for Ariston (*i.e.* the company which employed Mr. Way and in which Mr. Latilla was interested) ... please secure other concessions on the strike for my personal account: all parties know my intention and approve." Mr. Way's reaction to the cables was set out in his letter of October 8, 1928 in which he wrote: "I am in no way raising the question of any interest you are prepared to let me have in this venture as in your first cablegram to me you stated you would protect my interests and that promise is sufficient for me, and in consequence I am naturally very interested in what you intend doing." Mr. Way's reading of the first cable was not queried by Mr. Latilla who instead on Nov. 29, 1928 wrote: "I feel that as a result of what you have done in securing the properties we may look forward to getting at least a fair share of the plums and rewards."

In the event, Mr. Way obtained 16 concessions for Mr. Latilla who sold them at a profit of £1 million. Mr. Way originally claimed a concluded contract to give him an interest in the concessions which, by custom or on a reasonable basis, the trial Judge was asked to fix as one-third. The learned trial Judge allowed the claim and assessed the reasonable share as £30,000 or roughly 3% on the sum of £1 million. Both the Court of Appeal and the House of Lords rejected this view and decided that there was no concluded contract between the parties as to the amount of the share or interest that Mr. Way was to receive, and both the Courts declined to complete the contract for them as regards the amount of Mr. Way's interest which was an essential term.

What Lord Atkin in the next breath said in *Way* v. *Latilla* at page 763 are equally applicable in this case:

"But, while there is, therefore, no concluded contract as to the remuneration, it is plain that there existed between the parties a contract of employment under which Mr. Way was engaged to do work for Mr. Latilla in circumstances which clearly indicated that the work was not to be gratuitous. Mr. Way, therefore, is entitled to a reasonable remuneration on the implied contract to pay him quantum meruit."

We agree with the learned trial Judge that a fair reading of the entire letter of appointment would support the conclusion that it was the intention of the parties that Mr. Tay was to receive in addition to salaries and other benefits an incentive based on the profits of the Hatchery Division earned from year to year. The express provision for the payment of a commission which fails as a binding agreement because of the absence of the essential term as to the amount or rate of the commission is nevertheless a substantial factor in support of the implication of a contract to pay a *quantum meruit.* That the Employers had agreed to pay Mr. Tay a yearly incentive based on the profits was never in doubt.

With regard to the second ground of appeal, counsel for the Employers submitted that if there was an implied term in the contract of employment to pay Mr. Tay a *quantum meruit* this term was impliedly varied by Mr. Tay's omission since the start-up of the Hatchery in 1965 to 1975 to lay any claim to or make any provision in his divisional budgets for the *quantum meruit.* It was pointed out on behalf of the Employers that Mr. Tay as a manager of the Hatchery Division was not entitled, in line with other managers, to any commission and that he had received at all material times a bonus at the end of each year and the two additional bonuses we had referred to and which were based on merit. On that basis, counsel for the Employers submitted that if an officious bystander were to have asked the parties whether the contract to pay a *quantum meruit* was still binding, the parties would have answered in the negative. We do not think so at all. Mr. Tay who had not given the matter a moment's thought would probably have said yes. Certainly, the Employers would have answered yes. Mr. Arnet, the Managing Director of the Employers, in fact had honestly affirmed that he would have "done something about it," that is, he would have paid Mr. Tay his due, if he had known about it. It has to be stressed again that Mr. Tay was not only totally devoted to his work; he did not much care about his entitlements. On the question of bonuses, he had always left it to Mr. Arnet, as the latter frankly admitted in evidence. In these circumstances, it seems to us that the selfless inactivity of one party and the ignorance of the other party are very poor foundation to support any implied consensual variation of the contractual term to pay a *quantum meruit.*

We now turn to the appeal against the learned trial Judge's assessment of $80,000 and the imposition of interest at $20,000. It is clear to us that the parties had agreed to give Mr. Tay an incentive for his contributions to the profitability of the Hatchery Division which over the six years totalled $1.4 million after tax. Mr. Tay's role in the performance was crucial. The salesmen of the Employers used to get commission which, for example, for 1981 was $13,000. Mr. Arnet thought that $4,000 per year as the commission or incentive was reasonable, which would have amounted to $24,000 over the six years. On the other hand, Mr. Tay had claimed $162,369.10 on the basis of the number of chicks sold at two cents per chick commission. Half of this claim based on one cent per chick commission which was paid to the salesmen of the Employers would throw up the figure of some $81,000. We would ourselves therefore agree that $80,000 is a reasonable assessment in all the circumstances. We also think that the $20,000 interest is also fair.

For these reasons, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Drew & Napier; Michael B.B. Ong & Co.*

LEONG SZE HIAN v. TEO AI CHOO

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) April 19, 1983]

[Singapore – Civil Appeal No. 29 of 1982]

Land Law – Caveat – Application to remove – No action commenced by caveator – Lapse of 11 months – Removal of caveat on grounds of delay.

This was an appeal against the decision of Sinnathuray J. ([1982] 2 M.L.J. 12). The learned Chief Justice in an oral judgment allowed the appeal on the following grounds:

(a) the learned Judge was wrong in law in granting the plaintiff the orders requested without first determining